

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Order to
Forfeit a Fine of the License of
Patricia Larsen to Provide
Child Foster Care

**RECOMMENDATION ON
MOTION FOR SUMMARY
DISPOSITION**

This matter came on for a telephone prehearing conference before Administrative Law Judge Steve M. Mihalchick on March 22, 2004.

Patricia Larsen, 5401 Munger Shaw Rd., Saginaw, MN 55779, appeared on her own behalf. Clay Odden, Assistant St. Louis County Attorney, 320 W 2nd St, Room 403, Duluth, MN 55802-1495, appeared for the Department of Human Services and St. Louis County Social Services.

During the prehearing conference, the Department moved for summary disposition in its favor based upon the undisputed facts and the law. After allowing both parties to state their positions, the Administrative Law Judge stated that he would recommend in a written report that the Motion for Summary Disposition be granted and cancelled the hearing that was to be held March 25, 2004.

On April 1, 2004, the Administrative Law Judge wrote the parties and requested that the Assistant County Attorney provide copies of the Maltreatment Determination, Order of the Human Services Referee and Commissioner on Appeal of the Maltreatment Determination, and the County's Recommendation that Ms. Larsen be assessed a fine. The Assistant County Attorney has never responded to that request.

NOTICES

This Report is a recommendation, **not** a final decision. The Commissioner of the Department of Human Services will make the final decision after a review of the record and may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first class mail.

STATEMENT OF ISSUE

Should the Order to Forfeit a Fine in the amount of \$1,000 against Patricia Larson be affirmed? The Administrative Law Judge concludes that it should.

Based on all of the proceedings herein, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commission of Human Services order that the Department's Motion for Summary Disposition be **GRANTED** and that the Order to Forfeit a Fine in the amount of \$1,000 be **AFFIRMED**.

Dated: May 4, 2004

s/Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Conference tape recorded; not transcribed

MEMORANDUM

Authority

The Administrative Law Judge and the Department of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50 and 245A.08.

Scope and Standard of Review

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.^[1] The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.^[2]

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact. A genuine issue is one that is not sham or

frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.^[3] To successfully resist a motion for summary judgment, the nonmoving party must show that there are specific facts in dispute that have a bearing on the outcome of the case.^[4] A nonmoving party cannot rely on pleadings alone to defeat a summary judgment motion.^[5] The nonmoving party must establish the existence of a genuine issue of material fact by substantial evidence; general averments are not enough to meet the nonmoving party's burden.^[6]

When considering a motion for summary judgment, the facts must be viewed in the light most favorable to the non-moving party,^[7] and all doubts and factual inferences must be resolved against the moving party.^[8] If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.^[9]

Background Facts

For the purposes of this motion, the facts are those described by Ms. Larsen and Mr. Odden during the prehearing conference and those set out in the Order for Hearing. Where there is any doubt or dispute, the facts are viewed in the light most favorable to Ms. Larsen.

Licensee is licensed to provide family foster care in St. Louis County, Minnesota. She had been living in Duluth, Minnesota, but moved to a home in Saginaw, Minnesota in June, 2003. At that time she was providing care for two foster children, both girls. The youngest was 11 and the oldest was 17 at the time. Licensee was in the process of adopting the 11 year old and had been informed by the Carlton County Human Services worker that the adoption was almost completed and that she could treat the child as her own child. The 17 year old is her niece from the Twin Cities.

In addition to the two foster children, Licensee's own 12 year old daughter lives with her. Licensee is divorced and engaged in a custody dispute over the 12 year old with her former husband.

On the nights of June 11 and 12, 2003, Licensee was not at her Duluth home with the three children, but was instead moving to the new house in Saginaw where she stayed.^[10] A 20 year old boyfriend of the 17 year old foster child provided the only supervision of the children those two nights. He is not an approved substitute caregiver. An approved substitute caregiver did call the home to check on the children, but that caregiver did not go to the home or stay the night with the children. No background study had been initiated on the boyfriend, but he had been approved in Hennepin County to supervise visits between the 17 year old foster child and her stepfather.^[11] Licensee considers the boyfriend to be a positive influence on the 17 year old foster child.

On June 13, 2003, someone reported the matter to St. Louis County. Licensee believes the reporter was her former husband. St. Louis County Child Protection investigated the complaint and interviewed Licensee. By letter of June 22, 2003, Child Protection informed Licensee that it had determined that maltreatment, in the form of

neglect, did occur when she failed to provide adequate supervision to children in her care for at least one entire night. Licensee requested reconsideration of the maltreatment determination under the appeal provisions of the Reporting of Maltreatment of Minors Act.^[12] No action was taken by the County on the request for reconsideration because, it claims, the request was not timely. Licensee then appealed that determination under Minn. Stat. § 256.045. The Human Services Referee reportedly denied her appeal on the grounds that the request for reconsideration was untimely. That denial became the final order of the Commissioner under Minn. Stat. § 256.045, subd. 3c. Licensee's licensing worker then recommended to the Department that Licensee be fined for violation of the supervision requirements of the family foster care rules.^[13] Under Minn. Stat. § 245A.07, subd. 3(b)(4), a fine of \$200 per occurrence must be assessed for health, safety, or supervision violations.

On November 26, 2003, the Department issued Licensee an Order to Forfeit a Fine, Order of Conditional License. The Order to Forfeit a Fine assessed a fine of \$1,000, stating that pursuant to Minn. Stat. § 245A.07 subd. 3(b)(4), the Commissioner may fine license holders "\$1000 per each occurrence violation of law or rule prohibiting the maltreatment of children and vulnerable adults." The Order notified Licensee of her right to request a contested case hearing. Licensee filed a timely request for hearing.

Applicable Law

Minn. Stat. § 245A.07, subd. 1, provides that the Commissioner of Human Services may impose a fine or other sanctions against a license holder who does not comply with applicable rules or law. When applying sanctions, the Commissioner must consider "the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program."

Minn. Stat. § 245A.07, subd. 3, states that the Commissioner may impose a fine if a license holder fails to comply fully with applicable law or rule. Minn. Stat. § 245A.07, subd. 3(b)(4), provides:

(4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for each determination of maltreatment of a child under section 626.556 or the maltreatment of a vulnerable adult under section 626.557; the license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child or adult ratios, and failure to submit a background study; and the license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means each violation identified in the commissioner's fine order.

Minn. Stat. § 245A.08, subd. 2a(d), provides, in relevant part:

(d) When consolidated hearings under this subdivision involve a licensing sanction based on a previous maltreatment determination for which the commissioner has issued a final order in an appeal of that determination under section 256.045, or the individual failed to exercise the right to appeal the

previous maltreatment determination under section 626.556, subdivision 10i, or 626.557, subdivision 9d, the commissioner's order is conclusive on the issue of maltreatment. In such cases, the scope of the administrative law judge's review shall be limited to the disqualification and the licensing sanction or denial of a license.

The Order of Conditional License portion of the November 26, 2003, Order cited several provisions of the family foster care rules as having been violated by Licensee in connection with the failure to supervise the foster children. Among the rules cited were Minn. Rule 9545.0070 that requires the county agency to be notified in advance of changes in address or additional persons in the home; Minn. Rule 9545.0080 which requires the permission of the County before allowing adult roomers or boarders to keep the agency informed about all persons living in the home and all others having regular contact with the foster children; Minn. Rule 9545.0010, subp. 13, requiring that arrangements for substitute caregivers must have the approval of the agency and the foster parents; Minn. Rule 9545.0130 requiring approval of supervision plans when all adults in the foster family home are away from home for substantial amounts of time, and Minn. Rule 9545.0180 that requires the Licensee be prepared to cope with health emergencies.^[14] In the Order of Conditional License, the Department also cited Minn. Stat. Ch. 245C.03 which requires that background studies be conducted of certain persons connected to licensed programs. Such persons include any individual 13 and older living in the household, any volunteer having direct contact with persons served by the program who is not under the continuous direct supervision of the Licensee, and any individual who may have unsupervised access to the foster children.^[15]

Discussion

There is no dispute that Licensee's appeal of the maltreatment determination was brought before a Human Services Referee in a state agency hearing under Minn. Stat. § 256.045 and that that appeal was denied for to file a timely Request for Reconsideration. That Order became the Commissioner's Final Order. Thus, under Minn. Stat. § 245A.08, subd. 2a(d), the maltreatment determination cannot be challenged in this proceeding.

In the Order for Hearing, the Department stated that a fine of \$1000 may be assessed for each occurrence of a violation of law or rule prohibiting the maltreatment of children and vulnerable adults. More specifically, Minn. Stat. § 245A.07, subd. 3(b)(4), states that the fine shall be \$1000 "for each determination of maltreatment of a child under Section 626.556 or the maltreatment of a vulnerable adult under Section 626.557." Thus, as the Department argues, the fine to be imposed must be \$1000. Moreover, unlike fines for violations of various laws and rules where the Administrative Law Judge may review the facts to determine whether a violation actually occurred, in this case, the only issue is whether a determination of maltreatment has been made under Minn. Stat. § 626.556. Such a determination of maltreatment was made in this case, and because it was appealed through the state agency hearing process, it cannot be reviewed by the Administrative Law Judge.

Minn. Stat. § 245A.07, subd. 3, states that the Commissioner **may** impose a fine for failure to comply with applicable law or rule and that the Commissioner must consider the nature, chronicity, and severity of the violations and the effect on persons served by the program when applying sanctions. Thus, while a fine may be imposed, it must still be determined whether a fine should be imposed. Such a determination is usually based upon an examination of the facts determined after a hearing as they apply to the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

In this case a hearing is not necessary, because even accepting the facts that Licensee offers to prove, a fine should be imposed. She states that she would testify that she was close enough to get to the Duluth house quickly if necessary, in as little as 15 minutes, and that she was in frequent contact by cell phone. She states that the 20 year old boyfriend had been approved to monitor parental visits and is a fine person. The 17 year old foster daughter may have been an appropriate caregiver, but Licensee did not claim that, and apparently she was not an approved substitute. Licensee would demonstrate that her adoption of the 11 year old was almost complete and that she was told she could treat the child as her own. Despite these ameliorating facts, the fact that Licensee left two foster children without proper supervision and that a maltreatment determination was made weigh more heavily. The nature of Licensee's violation was blatant, and while this was not a chronic violation, it was severe and substantially risked the health and safety of the foster children. A fine is appropriate and the statute requires that the fine be \$1,000.

S.M.M.

^[1] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1995); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. Rules, 1400.5500K; Minn.R.Civ.P. 56.03.

^[2] See Minn. Rules 1400.6600 (2002).

^[3] *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).

^[4] *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Hunt v. IBM Mid America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).

^[5] *White v. Minnesota Dept. of Natural Resources*, 567 N.W.2d 724 (Minn. App. 1997).

^[6] *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (Minn. 1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).

^[7] *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).

^[8] See, e.g., *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986), *Thompson v. Campbell*, 845 F.Supp. 665, 672 (D.Minn. 1994); *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971).

^[9] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-251 (1986).

^[10] According to the Mapquest.com, the distance between the two addresses is 17 miles, most of which is on Highway 53, a four lane highway.

^[11] Supervised visitation is a Court program, not a program licensed by the Department. Therefore, the same background check requirements would not apply.

^[12] Minn. Stat. § 626.556, subd. 10i.

^[13] The Administrative Law Judge requested copies of the relevant documents to verify and more fully explain what happened procedurally, but they have not been provided.

^[14] The family foster care rules were repealed effective January 1, 2004 and rewritten as part of new rules adopted by the Departments of Corrections and Human Services and appear at Minn. Rule Ch. 2960.

^[15] These requirements appear in Minn. Stat. § 245C.03, subd. 1. Minn. Stat. Ch. 245C is a new statute that became effective April 18, 2003. The Order mistakenly cites subdivision 3 of the statute, apparently a mistake in reference to the prior statute, Minn. Stat. § 245A.04 subd. 3, which previously contained the same provisions.